

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE:

MELISSA HAYDON GAGNON
Debtor

Case No. 16-31080-KLP
(Chapter 13)

U.S. BANK TRUST, N.A., AS TRUSTEE
FOR LSF9 MASTER PARTICIPATION
TRUST C/O CALIBER HOME LOANS,
INC
13801 WIRELESS WAY
OKLAHOMA CITY, OK 73134
Movant

v.

MELISSA HAYDON GAGNON
404 TASEWELL AVENUE
COLONIAL HEIGHTS, VA 23834
(Debtor)

SUZANNE E. WADE
P.O. BOX 1780
RICHMOND, VA 23218-1780
(Trustee)
Defendants

MOTION FOR RELIEF FROM AUTOMATIC STAY

U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust (“U.S. Bank”) by undersigned counsel, respectfully moves this Honorable Court to terminate the Automatic Stay and, as grounds therefore, states as follows:

1. This proceeding seeking relief under Section 362 of the U.S. Bankruptcy Code is a contested matter within the meaning of 9014 and 4001 of the Federal Rules of

Bankruptcy Procedure, and this court has jurisdiction over this matter pursuant to 28 U.S.C. Section 157.

2. On March 7, 2016, the above named debtor, Melissa Haydon Gagnon (“Debtor”), filed in this court a Petition under Chapter 13 of the United States Bankruptcy Code. Suzanne E. Wade was appointed Chapter 13 Trustee.

3. On or about May 19, 2006, the Debtor executed and delivered to Beneficial Mortgage Company of Virginia a Note in the amount of ONE HUNDRED EIGHT THOUSAND FIVE HUNDRED SEVENTY-SEVEN and 06/100 dollars (\$108,577.06), plus interest at the rate of 8.890% per annum to be paid over twenty-five (25) years. A copy of the Note is attached as Exhibit “A” and incorporated herein.

4. To secure the repayment of the sums due under the Note, the Debtors executed and delivered to Beneficial Mortgage Company of Virginia a Deed of Trust dated May 19, 2006 encumbering the real property (“Property”) described as:

THE FOLLOWING DESCRIBED PROPERTY, TO-WIT:

ALL THAT CERTAIN LOTS OR PARCELS OF LAND, WITH THE IMPROVEMENTS THEREON AND APPURTENANCES THERETO BELONGING, LYING, BEING AND SITUATE IN THE CITY OF COLONIAL HEIGHTS, VIRGINIA, AND BEING KNOWN, NUMBERED AND DESIGNATED AS THE EASTERN 15 FEET OF LOT NO. 22 AND ALL OF LOTS NOS. 23 AND 24, IN BLOCK V, AS SHOWN ON A CERTAIN PLAT OF PROSPECT HEIGHTS, MADE BY JAMES A. CLARK, DATED SEPTEMBER 20, 1916, AND RECORDED IN THE CLERKS OFFICE OF THE CIRCUIT COURT OF CHESTERFIELD COUNTY, VIRGINIA, IN PLAT BOOK 3, AT PAGE 100.

BEING THE SAME PROPERTY CONVEYED TO JAMES A. HANRETTA AND MELISSA H. GAGNON BY DEED FROM JAMES A. HANRETTA, DATED JUNE 9, 1997, AND RECORDED DECEMBER 29, 1997, IN THE CLERKS OFFICE OF THE CIRCUIT COURT OF THE CITY OF COLONIAL HEIGHTS, VIRGINIA, IN DEED BOOK 202, PAGE 445.

THIS CONVEYANCE IS MADE SUBJECT TO ALL CONDITIONS,

EASEMENTS, RESTRICTIONS, RESERVATIONS AND AGREEMENTS OF
RECORD TO THE EXTENT THAT THEY MAY LAWFULLY APPLY. TAX MAP

which has the address of 404 Tasewell Avenue, Colonial Heights, VA 23834. The Deed of Trust was recorded in the Clerks' Office of Colonial Heights on May 25, 2006. A copy of the Deed of Trust is attached as Exhibit "B" and incorporated herein.

5. The Note was later transferred to U.S. Bank and U.S. Bank is the holder of the Note.

6. A copy of the Assignment is attached hereto as Exhibit "C" and incorporated herein.

7. The Debtor agreed to a permanent modification of the loan described above. The loan modification is attached as Exhibit "D" and incorporated herein.

8. As of December 13, 2016, the Debtor owes an unpaid principal balance of \$90,787.66 under the Note, plus additional accruing interest, late charges, attorneys' fees and costs.

9. As of December 13, 2016, the Debtor is post-petition due for August 24, 2016, which includes the following missed payments:

Periodic Payments in Arrears	Number of Missed Payments	From	To	Payment Amount	Total Due
Post - Petition Payments	4	08/24/2016	11/24/2016	\$879.35	\$3,517.40
Suspense:					(\$0.00)
Total Payments Past Due					\$3,517.40

10. The scheduled market value of the Property is \$123,664.00.

11. The Debtor is in default under the Note.

12. The Debtor has not and cannot offer U.S. Bank adequate protection of its interest in the Property, and U.S. Bank avers it is not adequately protected.

13. Cause exists to terminate the Automatic Stay.

14. THE DEADLINE TO FILE A RESPONSE TO THIS MOTION FOR RELIEF FROM THE AUTOMATIC STAY IS FOURTEEN (14) DAYS AFTER SERVICE OF THIS MOTION, WHICH IS THE DATE SHOWN ON THE CERTIFICATE OF SERVICE.

WHEREFORE, Movant prays that this Court issue an Order terminating or modifying the stay and granting the following:

- a. Relief from the stay allowing Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property and/or allowing Movant, through its agents, servicers and representatives to contact Debtors and/or Debtors' counsel for the purpose of engaging in discussions and consideration for possible loss mitigation options, solutions and/or resolutions with regard to the underlying mortgage and note, including, but not limited to loan modification, deed in lieu or other loss mitigation alternatives.
- b. That the Order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.
- c. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived.
- d. That it be exempted from further compliance with Fed. Rule Banker. P. 3002.1 in the instant bankruptcy case.
- e. For such other relief as the Court deems proper.

Respectfully submitted,

/s/ Kathryn E. Smits
Kathryn E. Smits, Bar #77337
Attorneys for the Movant
Atlantic Law Group, LLC
PO Box 2548
Leesburg, Virginia 20177
(703) 777-7101

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Motion for Relief from Automatic Stay were mailed by first class mail, postage-paid, and served electronically, where applicable, this 17th day of February, 2017 to the following parties:

Melissa Haydon Gagnon
404 Tasewell Avenue
Colonial Heights, VA 23834
Debtor
Via first class mail

Rudolph C. McCollum, Jr.
P.O. Box 4595
Richmond, VA 23220
Attorney for the Debtor
Via first class mail and electronic

Suzanne E. Wade, Trustee
P.O. Box 1780
Richmond, VA 23218-1780
Via first class mail and electronic

/s/ Kathryn E. Smits
Kathryn E. Smits, Esquire